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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Commercial Concrete, Inc.

File: B-260867

Date: April 25, 1995

DECISION

Commercial Concrete, Inc. protests the rejection of its bid by the Department of the Army under invitation for bid (IFB) No. DACA31-95-B-0022. The bid was rejected because it specified a shorter bid acceptance period than that required by the IFB.

We dismiss the protest because bids that specify an acceptance period that is shorter than the minimum period expressly required by the solicitation are nonresponsive on their face. Thus, the protest fails to state a valid legal challenge to the agency's rejection of the protester's bid.

Here, Commercial inserted in its bid an acceptance period of 30 days, which was less than the required 60 days. Commercial contends that its error was the "result of a latent ambiguity in the solicitation" at section K.11 and therefore its bid should not have been rejected. Section K.11 of the solicitation, Federal Acquisition Regulation ¶ 52.214.16, Minimum Bid Acceptance Period, provides, in pertinent part:

"(c) The [g]overnment requires a minimum bid acceptance period of 60 days calendar days.

"(d) In the space provide immediately below, bidders may specify a longer acceptance period than the [g]overnment's minimum requirement. The bidder allows the following acceptance period: ____ calendar days. [Emphasis added.]

"(e) A bid allowing less than the [g]overnment's minimum acceptance period will be rejected."

As stated above, Commercial inserted "30" in paragraph (d), which is less than the required 60 days in paragraph (c), and as paragraph (e) provides, the agency rejected Commercial's bid. The instant protest followed.

Specified bid acceptance periods are material requirements. A minimum acceptance period in an IFB requires bidders to share the same business risks of leaving their bids open for acceptance by the government for the same amount of time. A bidder

allowed to specify a shorter acceptance period would have an unfair advantage over its competitors by being able, on the one hand, to refuse the award after the bid acceptance period expires should the firm decide it no longer wants the award because of unanticipated cost increases, or, on the other hand, to extend the bid acceptance period after competing bids have been exposed if the firm wants the award. Sac & Fox Indus., Ltd., B-231873, Sept. 15, 1988, 88-2 CPD ¶ 250.

Consequently, it is well-established that an IFB requirement that a bid remain available for acceptance by the government for a prescribed period of time is a material requirement, and a failure to comply with it cannot be waived or corrected after bid opening. See, e.g., Siems Rental & Sales Co., Inc., B-257773, July 29, 1994, 95-1 CPD ¶ 51; Taylor Lumber & Treating, Inc., B-229715, Dec. 23, 1987, 87-2 CPD ¶ 625. This is the case even if the bid would provide savings to the government; we have long recognized that the public interest in maintaining the integrity of the competitive bidding process outweighs any monetary benefit to be gained from waiving bidding deficiencies. *Id.*

While the protester claims that section K.11 is somehow ambiguous, we have previously held that the language, contained here in section K.11, when read as a whole, has only one reasonable interpretation. See San Sierra Bus. Sys.-Recon., B-233858.2, Feb. 1, 1989, 89-1 CPD ¶ 104; General Elevator Co., Inc., B-226976, Apr. 7, 1987, 87-1 CPD ¶ 385. In this case, Commercial simply inserted a shorter acceptance period than allowed in clear derogation of the language in section K.11, which requested a 60-day acceptance period and specifically warned that a shorter acceptance period was unacceptable. At best, its bid was ambiguous and therefore nonresponsive because of the conflicting bid acceptance period figures contained. See Siems Rental & Sales Co., Inc., *supra*.

The protest is dismissed.


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